

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1654 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

STATE TRANSPORT EMPLOYEES CO. OP. SOCIETY LTD.

Versus

STATE OF GUJARAT

Appearance:

MR PM THAKKAR for Petitioner
Mr D P Joshi, AGP for Respondent No. 1
MR PS CHARI for Respondent No. 2, 3

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 07/04/2000

CAV JUDGEMENT

This is a petition under Article 226 read with Article 14 of the Constitution of India challenging the orders of the Addl.Registrar, Cooperative Societies

(Appeals), Gujarat State, Gandhinagar dated 17th March, 1988 rejecting the amendment made by the petitioner and partly confirming the orders of the District Registrar, Cooperative Societies, Rajkot dated 19.1.1988.

2. The present petitioner is a Cooperative Society registered under the provisions of the Gujarat Cooperative Societies Act, 1961 (for short 'the Act'). The members of the petitioner-society are the employees of the Gujarat State Road Transport Corporation. They have formulated certain bye-laws and some funds have been created for smooth running of the said society. The petitioner alleges that in the Annual General Meeting of the society for the year 1986-87 held on 27.9.1987, certain items were placed on additional agenda with a view to amend the bye-laws of the petitioner society. A detailed proposal was made and it was ultimately decided to amend the bye-laws in accordance with the said proposal. The petitioner alleges that the said amendment in the existing bye-laws were in the interest of the Society and the members of the said Society and, therefore, it was necessary to amend those bye-laws. That the said amendment was placed before the District Registrar, Cooperative Societies and after carefully considering the said amendment, the District Registrar passed an order dated 19.1.1988 and registered the said amended bye-laws under Section 13 of the said ACT. That thereafter two members of the Society who have been joined as respondents No.2 and 3 in this petition, preferred appeal under Section 153 of the said Act before the Registrar of Cooperative Societies and after hearing the parties, the Addl.Registrar, Cooperative Societies (Appeals), Gujarat State, partly allowed the appeal and directed that the amendment proposed to be made in the bye-laws and registered by the Registrar, Cooperative Societies be not permitted. The petitioner claims that the aforesaid orders of the Addl.Registrar, Cooperative Societies are illegal and against the provisions of the said Act. The petitioner alleges that the amendment in the bye-laws was really in the interest of the Society and, therefore, the Addl.Registrar, Cooperative Societies ought not to have interefered with the said exercise of powers of the petitioner-society. The petitioner-society has, therefore, filed this writ petition for appropriate writ, order or direction for quashing and setting aside the impugned order passed by the Addl.Registrar, Cooperative Societies (Appeals), Gujarat State dated 17.3.1988.

3. At the initial stage, notaice pending admission was issued making it returnable on 12.4.1988.

Thereafter, on 6.7.1988, the petition was admitted and ad-interim relief was ordered to be issued in terms of para 11(B) of this petition. Thereafter the matter was adjourned from time to time and ultimately the matter was heard. Learned Advocate for the petitioner argued the matter on behalf of the petitioner and learned AGP argued the matter on behalf of the first respondent. Respondents No.2 and 3 were duly served and they were represented by the learned Advocate before this Court, but none appeared for and on behalf of them on the date of hearing.

4. It is the contention of the petitioner that the petitioner had amended the bye-laws and that was in consonance with the spirit of the Cooperative movement and therefore, the Addl.Registrar, Cooperative Societies should not have interfered with the said power of the petitioner-society with respect to the amendment in the bye-laws. The petitioner, therefore, claims that the said order of the Addl.Registrar, Cooperative Societies is illegal.

5. It would be necessary to consider the amendment proposed to be made by the petitioner-Society in the existing bye-laws. In fact so far as this petition is concerned, this court is concerned with the amendment in bye-laws No.52 and 59 (3). Firstly, the amendment in existing bye-laws No.52 is to be considered. There is existing position in sub-rule (11) with respect to compulsory saving to the effect that the member will have a deduction of Rs.50/- per month as compulsory saving and this amount will be limited to maximum of Rs.2000/- and thereafter, the member concerned will be given exemption from the said compulsory saving. That the amount of compulsory saving will be decided by the Annual General Meeting or Special General Meeting of the Cooperative Society. The above is the existing position in sub-rule (11) of bye-law No.52. The proposed amendment in sub-rule (11) would read as follows:

"That the compulsory saving will be at Rs.50/per month. That this reduction for compulsory saving will be continued till the member continues to be the member of the Society."

Remaining part virtually is the same as it was in the existing sub-rule. Therefore, the difference under the existing sub-rule (11) is that there was a ceiling of Rs.2000/- in respect of each member. Under the amended provisions, the said ceiling has been removed. This would mean that even if a member has a saving of more

Rs.2000/-, the compulsory saving will be continued till the member continues to be the member of the petitioner-society. Under the existing rule, the ceiling was Rs.2000/- and, therefore, as soon as the amount reaches that figure, the deduction would be stopped. The intention and object for the said amendment appears to be that if the ceiling is removed, the members will be at liberty to have more saving and more deduction. This would increase fund of the petitioner-society and the petitioner-society would not be required to raise fund from outside.

6. The reasoning applied by the learned Addl.Registrar of Cooperative Societies appears to be that this would lead to some anomalies between the senior members and junior members of the society. It is also the case of the State that if the ceiling is removed, then persons who may be junior in service might deposit more amount, with the result, they would have more credit balance and, therefore, they will be entitled to withdrawal of more amount. This reasoning does not appear to be acceptable. Naturally when the deduction is more, the balance would be more and consequently, the entitlement for withdrawal will also be more. One should save more and get more. There is no difficulty in understanding this logic. Apart from the aforesaid position, it has been contended by the learned Advocate for the petitioner that respondents No. 2 and 3 of this petition who had initially objected to the aforesaid amendment have subsequently been subscribing as per the amended rules. Therefore, the deduction is as per the amended rule and they have not objected to the said amendment thereafter. It has also been contended on behalf of the petitioner that one of the two contesting respondents No.2 and 3 has become the Vice Chairman of the Society and he is mainly dealing with this subject. This shows that the grievance voiced by these two contesting respondents No.2 and 3 does not remain there at present. The fact that nobody appears on behalf of these two respondents is also significant. Looking to the above, the position appears to be that these respondents have no contest at present.

7. Considering the above position, the learned AGP also shows that if the ceiling is removed, it would not be against the spirit of the Cooperative movement.

8. So far as the bye-law No.59(3) is concerned, the amendment is with respect to the deduction of Rs.5/every month by each member. The amendment is that instead of Rs.5/-, the deduction should be Rs.10/-. Here also the

reasoning of the learned Addl.Registrar is that if the deduction is more then, consequently the assistance provided should also be increased pro-rata. Initially, the assistance for marriage ceremony was Rs.6000/- and now it has been increased to Rs.7000/-. The reasoning given by the learned Addl.Registrar is that since the deduction has been raised from Rs.5/- to 10/- the assistance should also be raised from Rs.6,000/- to Rs.12,000/- and since this is not done, the increase in the deduction should not be permitted.

8. This is also not a logical argument as per the reasoning given by the learned Additional Registrar the Cooperative Society. If the amount is raised from Rs.5/to Rs.10/-, so far as the deduction is concerned, the total additional subscription may not be so high, hence assistance for marriage ceremony from Rs.6000/- to Rs. 12,000/- cannot be raised. After all the petitioner-society has also to run its business and administration. If it does not have sufficient funds, it cannot lend monetary assistance on marriage ceremony to the extent of Rs.12,000/- in each case. Therefore, there cannot be strict relation between the two. In other words, if the deduction is increased from Rs.5/- to Rs.10/-, it would necessarily mean assistance for marriage ceremony should also go from Rs.6,000/- to Rs.12,000/- as per the logic of the Addl.Registrar which does not appear to be rationale or reasonable . Therefore, if that amount is not increased to Rs.12,000/from Rs.6,000/-, it cannot be said that initial increase in the subscription from Rs.5/- to Rs.10/should also be struck down.

9. Mr D P Joshi, learned AGP also argued that in all cases, it may not be possible for the petitioner-society to raise the amount of assistance on marriage ceremony from Rs.6,000/- to Rs.12,000/-, simply because the deduction is increased from Rs.5/- to Rs.10/- per member. Therefore, the increase of deduction from Rs.5/- to Rs.10/- per member cannot be said to be unreasonable and illegal. It can also not be said to be one against the members and spirit of cooperative movement. Therefore, it cannot be struck down on that consideration. In the aforesaid circumstances, it is very clear that the learned Addl.Registrar has struck down those amendment on extraneous consideration not based on sound principles relating to the spirit of the cooperativie movement in the State. The reasoning given by the Addl.Registrar of Cooperative Societies are not acceptable and they are not legal and rationale for any purpose. Under the circumstances, looking to the arguments advanced even on

behalf of the State by the learned AGP, it is very clear that the learned Addl.Registrar had considered extraneous matters and the reasons given by him are not acceptable as they are not based on spirit of the cooperative movement though they are shown to have been on that line.

10. In view of the above, the proposed amendment in the bye-laws appear to be in the interest of the petitioner-society and, therefore, they could have been allowed by the learned Addl.Registrar, Cooperative Societies. Since the said amendments have been disallowed by him on extraneous matters, it is necessary for this Court to interfere by invoking its extraordinary jurisdiction and consequently since the said orders of the learned Addl.Registrar are held to be illegal and they are required to be quashed and set aside.

11. With these observations, I find that this is a fit case wherein this Court should interfere by invoking its extraordinary jurisdiction and should set aside and quash the impugned order passed by the learned Addl.Registrar of Cooperative Societies. It is therefore, directed that the present petition be allowed. The orders passed by the learned Addl.Registrar of Cooperative Societies (Appeals), Gujarat State dated 17.3.1988 are held to be illegal and therefore, are quashed and set aside and the first respondent is prevented from implementing the said orders dated 17.3.1988 recorded by the learned Addl.Registrar, Cooperative Societies (Appeals), Gujarat State.

Rule is made absolute to the extent indicated above. In the facts and circumstances of the case, there shall be no order as to costs.

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msp.